

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALEXANDER R. JEZIERSKI and U.S. POSTAL SERVICE,
POST OFFICE, Vancouver, WA

*Docket No. 01-2000; Submitted on the Record;
Issued June 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on May 16, 2001.

On May 16, 2001 appellant, then a 58-year-old mail carrier, filed a claim alleging that he sustained an injury at work on that date.¹ He claimed that he experienced pain from his right hip through his right knee.² By decision dated July 16, 2001, the Office of Workers' Compensation Programs denied appellant's claim that he sustained an employment-related injury on May 16, 2001 on the grounds that he had not established the fact of injury. The Office determined that appellant had given conflicting accounts of how he sustained his claimed injury.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on May 16, 2001.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which

¹ Appellant indicated that the injury occurred at 11:00 a.m. on that date.

² Regarding the cause of the injury, appellant stated, "Not a specific function. Started out the day okay. Half-way through the day, the right hip starting (sic) and, as the day went on, the pain went down the right thigh to the knee." In a statement dated June 19, 2001, appellant indicated that he first felt a sharp pain in his right side on May 16, 2001 at around 11:00 a.m. when he twisted to his left to pick up a bundle of mail weighing 8 to 10 pounds. He further indicated that he continued to deliver mail on that date; he noted that his pain worsened and traveled from his right hip down to his right knee.

³ 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁶ An employee has not met his burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁷ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁸ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁹

The Board finds that appellant established employment factors in the form of twisting to pick up a bundle of mail weighing up to 10 pounds and delivering mail on his route on May 16, 2001. He has consistently indicated that he sustained injury, manifested as pain radiating from his right hip to right knee, when he twisted to pick up a bundle of mail weighing 8 to 10 pounds and delivered mail on May 16, 2001. Appellant's account of the circumstances of his claimed injury on May 16, 2001 has not been refuted by strong or persuasive evidence. The evidence of record does not contain such inconsistencies as to cast serious doubt upon the validity of appellant's claim in this regard.

In his initial claim form, appellant identified the injury as occurring on May 16, 2001 at 11:00 a.m. Although this initial form was somewhat lacking in detail, appellant provided additional information in a statement dated June 19, 2001. In this document, he indicated that he first felt a sharp pain in his right side on May 16, 2001 at 11:00 a.m. when he twisted to his left to pick up a bundle of mail weighing 8 to 10 pounds and that his pain increased as he continued to deliver the mail.

In various medical reports, appellant also provided similar descriptions of sustaining an injury on May 16, 2001. Although some of these accounts lack detail, they all are consistent with appellant's claim that he sustained injury on May 16, 2001 by lifting mail while twisting and by delivering mail. In a medical report dated May 16, 2001, appellant reported that he sustained injury on May 16, 2001 due to "twisting [and] delivering mail." In another medical

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁶ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁷ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁸ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

⁹ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

report dated May 16, 2001, appellant reported that he “started hurting around 11:00 [on May 16, 2001] and just kept getting worse.” In a report dated June 5, 2001, Dr. Jay D. Miller, an attending Board-certified orthopedic surgeon, noted that appellant reported experiencing pain from his right hip through right knee while working on May 16, 2001. Dr. Miller indicated that appellant reported that he first experienced the pain while driving at 11:00 a.m. on that date and that the pain became progressively worse as he completed his delivery route. Although Dr. Miller indicated that it was difficult to obtain a history from appellant, the account provided by him of his claimed May 16, 2001 injury is essentially consistent with the other accounts of record.¹⁰

The Board further finds that appellant has not submitted sufficient medical evidence to establish that he sustained an injury on May 16, 2001 due to the accepted employment factors. In two reports dated May 16, 2001, a registered nurse indicated that appellant sustained a lumbar strain and sciatica due to the reported May 16, 2001 employment activity. However, a nurse is not a “physician” within the definitions under the Act and thus cannot render a medical opinion on the causal relationship between a given physical condition and implicated employment factors.¹¹ Appellant submitted medical documents concerning his treatment after May 16, 2001, as well as his treatment for prior problems, but none of these reports contains a rationalized medical opinion relating a diagnosable condition to the accepted employment factors.¹²

For these reasons, appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on May 16, 2001.

¹⁰ Dr. Miller indicated that appellant also attributed his problems to a vehicular accident “four or five years ago.” The record reflects that appellant sustained employment-related cervical, lumbar and abdominal strains due to a vehicular accident on September 11, 1996. The fact that appellant believed that he still had residuals from the September 11, 1996 injury would not obviate his belief that he sustained further injury on May 16, 2001.

¹¹ See *Bertha L. Arnold*, 38 ECAB 282, 285 (1986); 5 U.S.C. § 8101(2).

¹² In his June 5, 2001 report, Dr. Miller indicated that he could not provide a clear diagnosis of appellant’s condition.

The decision of the Office of Workers' Compensation Programs dated July 16, 2001 is affirmed as modified to reflect the acceptance of the above-described employment factors.

Dated, Washington, DC
June 18, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member